

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Equitrans, L.P.

Docket Nos. RP05-105-000
RP04-97-000
RP04-203-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO
REFUND AND CONDITIONS, AND ESTABLISHING
CONSOLIDATED HEARING PROCEDURES

(Issued December 30, 2004)

1. On November 30, 2004, Equitrans, L.P. (Equitrans) filed, under section 4 of the Natural Gas Act (NGA), tariff sheets¹ to establish gathering and transportation rates for the rate zone of its system known as the CIPCO District² that reflect the Commission-approved refunctionalization of transmission plant to gathering plant.³ Equitrans states that the rates are the same or lower than those proposed in its ongoing Docket No. RP04-203 general rate case proceeding. The proposed CIPCO District rates were rejected in

¹ See Appendix for the list of tariff sheets.

² On May 20, 2002, Equitrans and Carnegie Interstate Pipeline Company (CIPCO) filed a joint application in Docket No. CP02-233-000 seeking Commission authorization for Equitrans to acquire and operate CIPCO's pipeline services and facilities. Under the proposal, the former CIPCO facilities would be treated as a separate rate zone to be known as the "CIPCO District" at initial maximum recourse rates equal to CIPCO's then-existing maximum rates. The Commission granted Equitrans certificate authority for the acquisition of these facilities and the initial rates on July 1, 2003. *Equitrans, L.P.*, 104 FERC ¶ 61,008 (2003), *reh'g denied* 106 FERC ¶ 61,013 (2004).

³ *Equitrans, L.P.*, 109 FERC ¶ 61,209 (2004).

that proceeding because the Commission had not approved the refunctionalization before the end of the suspension period.⁴ Equitrans requests waiver of the 30-day notice period to permit a December 1, 2004 effective date.

2. The Commission accepts and suspends the proposed changes to the CIPCO District rates, to be effective December 1, 2004, subject to refund, sets the issues for hearing and consolidates the proceeding with the ongoing proceeding in Docket Nos. RP04-97 and RP04-203.

I. Background

3. On March 1, 2004, Equitrans filed a general rate case in Docket No. RP04-203-000. Equitrans filed tariff sheets to reflect a rate increase for most services and rates. Equitrans also proposed a rate decrease for the CIPCO District's transportation rates and new gathering rates premised upon a refunctionalization of transmission plant to gathering plant. The request for refunctionalization of transmission plant was contained in a separate filing, in Docket No. CP04-76-000. Equitrans proposed an approximately \$23.3 million increase in its annual jurisdictional cost of service, to a total of approximately \$69.3 million. The Commission accepted and suspended the proposed changes for five months, to be effective September 1, 2004, subject to refund, set issues for hearing and directed Equitrans to remove the refunctionalized costs from its proposed gathering rates if Equitrans moved the rates into effect prior to a Commission order in Docket No. CP04-76-000.⁵

4. Equitrans moved its Equitrans District rates into effect September 1, 2004, along with its other proposed rates. Because the Commission had not issued an order in Docket No. CP04-76-000 on Equitrans' request for refunctionalization as of that date, Equitrans stated that it reserved the right to move into effect its proposed gathering and transmission rates for the CIPCO District upon issuance of an order in that docket. In an order issued on November 23, 2004, the Commission found that Equitrans could not reserve a right to move those proposed rates into effect upon the issuance of an order in Docket No. CP04-76-000 because those proposed rates were rejected because a condition

⁴ *Equitrans, L.P.*, 106 FERC ¶ 61,340 (2004), *order on reh'g*, 109 FERC ¶ 61,214 (2004).

⁵ *Equitrans, L.P.*, 106 FERC ¶ 61,340 (2004).

for their acceptance had not been met.⁶ However, because the Commission was contemporaneously issuing an order in Docket No. CP04-76-000 permitting the refunctionalization of transmission and storage plant to gathering,⁷ the Commission stated that it would allow Equitrans to make a limited section 4 filing in a new docket in order to reflect the rate changes as a result of that decision and would, at that time, include the revised rates in the issues to be litigated in the ongoing hearing proceeding in the instant Docket No. RP04-203.⁸

II. Proposal

5. Equitrans proposes to establish new gathering rates and correspondingly lower transmission rates for the CIPCO District reflecting the refunctionalization of facilities permitted in Docket No. CP04-76-000. No changes are proposed to any of the other storage or transmission rates proposed in Docket No. RP04-203-000 that went into effect, subject to refund and conditions, September 1, 2004. The proposed CIPCO District transportation rates are the same or lower than those proposed but rejected in Docket No. RP04-203-000.⁹ Equitrans has chosen a base period that corresponds with the test period of Docket No. RP04-203-000 (12-months ending July 31, 2004) to facilitate reconciliation of the data between the two proceedings. It asserts that this base period supports a total annual cost of service of approximately \$71.4 million, as compared to the requested total revenue requirement of approximately \$69.3 million. Other than reflecting the effects of refunctionalization, Equitrans states that it proposes no adjustments to base period numbers for the test period. Equitrans states that it proposes to use the same cost of service and rate design methodologies proposed in Docket No. RP04-203-000. Equitrans incorporates by reference the data filed in Docket No. RP04-203-000 in support of its proposed rates in the instant proceeding.

⁶ *Equitrans, L.P.*, 109 FERC ¶ 61,214 (2004) (November 23, 2004 Order). The condition that was not met was the issuance of an order in Docket No. CP04-76-000 as to the proper jurisdictional status of certain facilities before Equitrans moved its rates into effect.

⁷ *Equitrans, L.P.*, 109 FERC ¶ 61,209 (2004).

⁸ *Equitrans, L.P.*, 109 FERC ¶ 61,214 at P 48 (2004).

⁹ Equitrans states the proposed CIPCO District transmission rate is lower than that proposed in Docket No. RP04-203-000 due to adjustments to reflect actual plant in service at the end of the Docket No. RP04-203-000 test period.

6. Equitrans requests waiver of the 30-day notice period to permit a December 1, 2004 effective date. In support of its requested waiver, Equitrans notes that customers and the public have been on notice for approximately eight months of its intent and the level of the proposed rates. Further, it states that a shortened notice period will permit CIPCO District transmission customers to enjoy lower rates. Equitrans also requests a three business day extension of time to satisfy the electronic filing requirements of Part 154.¹⁰ Equitrans states that key personnel were unavailable during the Thanksgiving holiday period.

7. Equitrans also requests a minimal suspension period.¹¹ Finally, Equitrans states that it supports consolidation of this proceeding with the ongoing general rate case proceeding in Docket Nos. RP04-97 and RP04-203.

III. Notice, Interventions, and Protests

8. Notice of Equitrans' filing was issued on December 7, 2004, 69 Fed. Reg. 74,510 (2004). Interventions and protests were due as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2004)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. The Independent Oil & Gas Association of West Virginia (IOGA), the Peoples Natural Gas Company d/b/a Dominion Peoples (Dominion Peoples) and Philadelphia Gas Works (PGW) protest Equitrans' filing. The protests are addressed below.

IV. Discussion

9. The Commission finds good cause to waive the 30-day notice requirement and, therefore, accepts and suspends the proposed rates, effective December 1, 2004, and subject to refund. The Commission further sets this proceeding for hearing and consolidates it with the ongoing hearing proceeding in Docket Nos. RP04-97 and RP04-203.

¹⁰ On December 3, 2004, Equitrans filed their required electronic documents.

¹¹ Equitrans states that it reserves the right to seek rehearing of the Commission's rehearing order in Docket No. RP04-203-001. However, if its requests for a shortened notice period and minimal suspension are granted, Equitrans states that any such request for rehearing would be largely moot and it would withdraw it if filed.

10. IOGA argues that Equitrans' filing fails to explain or support the basis of the proposed rates as required by section 154.7(a)(6)¹² and other filing requirement regulations. IOGA requests that the Commission reject Equitrans' filing.

11. The Commission rejects IOGA's request. Equitrans structured the required data submissions to integrate its filing with the underlying rate case in Docket No. RP04-203-000. It recognized the need to provide a total cost of service through the choice of a base period that matches the Docket No. RP04-203-000 test period and then incorporated the Docket No. RP04-203-000 record by reference. Equitrans' choice of a base period is within the discretionary period provided by section 154.303(a) of the Commission's regulations and it is permitted to incorporate the record in Docket No. RP04-203-00 by section 154.302 of the Commission's regulations.

12. IOGA also believes that Equitrans' support of the gathering cost allocation and rate design is inadequate. Equitrans filed testimony in support of its proposed gathering and CIPCO District transportation rates in both the instant docket and in Docket No. RP04-203-000. Whether the testimonies are adequate to support its proposals is the subject of the hearing proceeding established below.

13. In the alternative, IOGA reiterates its protest to the gathering rates as first proposed in Equitrans' Docket No. RP04-203-000. In addition, IOGA asserts that Equitrans may outsource its gathering operations and other services, and such actions may result in costs different from those contained in Equitrans' filing. IOGA questions certain net plant data, and believes that the gathering facilities should be written down to reflect commercially reasonable levels. PGW also notes its prior objections made in Docket No. RP04-203-000 to cost allocations between services and functions and states that Equitrans has not demonstrated that the allocations would be just and reasonable. IOGA and PGW request that the Commission set the proceeding for hearing.

14. IOGA, PGW and the Commission's prior orders in Docket Nos. RP04-97-000 and RP04-203-000 have identified many issues that require additional examination. Further, no party objects to Equitrans' suggestion that the proceeding be set for hearing with the ongoing hearing proceeding in Docket Nos. RP04-97-000 and RP04-203-000. The Commission will set this case for hearing in the ongoing hearing proceeding in Docket Nos. RP04-97-000 and RP04-203-000.

¹² That section requires a tariff filing to include a statement of the nature, reasons, and basis for the filing.

15. Equitrans, in anticipation that the Commission will suspend the proposed tariff changes, requests a minimal suspension and a waiver of the 30-day prior notice period to permit the proposed rates to go into effect December 1, 2004. Equitrans notes that its customers have been on notice for over eight months of its intent and the rate levels it would propose. Further, as it was not able to move these rates into effect in the Docket No. RP04-203 proceeding, it asserts that it is experiencing lost revenue opportunities. In addition, for CIPCO District transportation customers, Equitrans notes that its proposed rates are a reduction from those currently in effect. It states that a longer suspension period would deprive these customers of the benefits of the lower transmission rates.

16. Dominion Peoples and IOGA request that the Commission impose the maximum suspension period of five months. Both parties assert that, while the CIPCO District transportation rates are reduced, the cumulative impact of Equitrans' proposal, including the new gathering rates, will result in a significant increase in their revenue responsibilities. They also argue that Equitrans chose the procedural path that led to the delay, and that the Commission's evaluation of the length of the suspension period should not take the delay into consideration. IOGA adds that the Commission must take into account the interests of the rate payers. Where costs are excessive, IOGA contends a full suspension is justified. IOGA further contends that the subject to refund condition cannot adequately protect producers because they receive a wellhead price based on the cost of transportation and gathering.

17. The Commission will accept and suspend Equitrans' proposed rates, effective December 1, 2004, subject to refund and to the outcome of the hearing. Good cause exists to grant waiver of the 30-day statutory notice requirement. Equitrans has provided clear notice of its intentions to propose the rates that are the subject of the instant proceeding since at least March 1, 2004.¹³ Further, the Commission specifically authorized Equitrans to make the instant filing in its November 23, 2004 Order. With the Commission's finding in Docket No. CP04-76-000 approving the proposed refunctionalization, Equitrans must be provided an opportunity to recover costs associated with the gathering facilities and services. Finally, until the Commission has a complete record upon which to make a finding that the rates are just and reasonable, the only protection the Commission can offer is that provided by the NGA – the refund condition. The effect of any potential refunds on the prices producers receive at the wellhead is a matter of private contract.

¹³ *Equitrans, L.P.*, 106 FERC ¶ 61,340 (2004).

18. Based upon a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets listed in the Appendix for filing, suspend their effectiveness for the period set forth below, and permit them to become effective, subject to the conditions set forth in this order.

19. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.¹⁴ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.¹⁵ Such circumstances exist here. Accordingly, the Commission will exercise its discretion to suspend the accepted tariff sheets listed in the Appendix for the minimum period and permit the rates to take effect on December 1, 2004, subject to refund and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) Waiver of the 30-day notice requirement of the NGA is granted and the tariff sheets listed in the Appendix are accepted and suspended, to be effective December 1, 2004, subject to refund and the outcome of the hearing established in this order.

(B) Pursuant to the authority of the NGA, particularly sections 4, 5, 8 and 15 thereof, a public hearing will be held in Docket No. RP05-105-000 concerning the lawfulness of Equitrans' proposed rates and consolidated with the ongoing hearing in Docket Nos. RP04-97-000 and RP04-203-000.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

¹⁴ *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹⁵ *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

Appendix: List of Tariff Sheets Accepted and Suspended, effective December 1, 2004:

Equitrans, L. P.: Original Volume No. 1:

Eleventh Revised Sheet No. 5

Fourteenth Revised Sheet No. 6

Sixth Revised Sheet No. 11

Fifth Revised Sheet No. 22

Fifth Revised Sheet No. 28

Fifth Revised Sheet No. 31